nothing to justify the learned District Judge in treating the evidence of the prosecution witnesses Teoh Ah Chai and Teoh Ah Teck as untruthful and, thirdly, that there was no evidence that the appellant was in effect entrusted with any sort of dominion over the stone.

On all these matters I am satisfied there was ample evidence to support the conclusions at which the learned District Judge arrived, and I see no reason to interfere with his findings on any one of them.

As regards the identity of the stone in question, there was the evidence of persons who were accustomed to deal with it and who said they recognised it, and in addition there was the evidence of the lorry driver who collected it from the quarry and who deposited it at the spot where traces of it were subsequently found.

As regards the truthfulness or untruthfulness of the witnesses Teoh Ah Chai and Teoh Ah Teck, the learned District Judge had the benefit of observing their demeanour and of listening to their evidence. He has weighed their evidence with some care against the other evidence in the case, and I can discover no reason for quarrelling with him for rejecting it.

As regards the question as to whether the appellant was in fact entrusted with dominion over the stone, it is necessary to consider the exact wording of the section of the Code the relevant portions of which reads as follows :—

> Whoever, being . . . . employed as a clerk or servant, and being in any manner entrusted in such capacity with . . . . dominion over property, commits criminal breach of trust in respect of that property, shall be punished.

So far as I have been able to advise myself, no direct authority exists on the point, and I take the view that the section applies not merely in cases where the exercise of possession of dominion over property is one of the legal incidents of the contract of service but in every case where by virtue of the existence of the contract of service the accused person is in fact in a position to exercise dominion as in this case. The evidence of the Executive Engineer who was the appellant's official superior was to the fact that while he gave general orders for any one day as to the use of departmental lorries nevertheless circumstances might arise where any other official might amend these orders and give other orders. That being so, the learned District Judge was fully entitled to find in fact that by virtue of his contract of service, the accused was in a position to exercise dominion over the stone from the Public Works Department Quarry, and that in the particular circumstances of the present case he did exercise that dominion prior to committing the breach of trust in respect of the property over which he exercised it.

The appeal against the conviction is accordingly dismissed.

The appellant appeals against the sentence on the ground that in view of the small value of the property and in view of the fact that he is a first offender, it is excessive.

The offence of which the appellant has been convicted is a serious one and any Court which failed to recognise that would be lacking in its duty to the public. Nevertheless, I am of the opinion that the learned District Judge attached insufficient weight to the small value of the property involved. The sentence will accordingly be altered to one of one month rigorous imprisonment.

Appeal against conviction dismissed. Sentence reduced.

LLOYD, SIR HUGH v. YEAP LIAN SENG & ORS.

[C. A. (Murray-Aynsley C.J., Pretheroe Ag. C.J. (F.M.) and Brown J.) June 11, 1948]

[Singapore — Civil Appeal No. 3 of 1948]

Landlord and tenant — Contractual tenancy — Whether acceptance of rent creates contractual tenancy — Statutory tenancy — Increase of Rent (Restriction) Ordinance — Control of Rent Ordinance, 1947.

In this case the premises in question had been occupied and later requisitioned by the Air Force. Up to 31st March, 1947, the premises were occupied by Sir George Pirie as a tenant. On 30th January, 1947 the trustees of the estate of Sir Manasseh Meyer (deceased) wrote a letter to the Air Commander-in-Chief, Sir George Pirie, which the appellant alleged contained the offer of a monthly tenancy. This offer, if there had been one, was withdrawn by a letter dated 25th February, 1947 written by the solicitors for the owners. This letter preceded the purported acceptance of the alleged offer of a monthly tenancy which was dated 4th March 1947. After this Sir George Pirie remained in occupation and tendered rent which was accepted by the then owners. The respondents purchased the house some time before 10th September 1947. On 17th November, 1947 Sir George Pirie executed a deed by which he transferred all his right, title and interest in the premises to the present appellant. The respondents took proceedings to eject the appellant from the premises and they obtained judgment in the Court below. Against the judgment, the appellant appealed.

Held, (affirming the decision of Thorogood J.): (1) in the circumstances of this case and because of the provisions of the Increase of Rent (Restriction) Ordinance and Control of Rent Ordinance the acceptance of rent by a landlord from a tenant who holds after the expiry of a term does not by itself give rise to the inference that a new contractual term has been created; (2) there was nothing else in the circumstances of this case which could give rise to the inference that a new contractual tenancy was created; (3) that Sir George Pirie was only a statutory tenant and had no right as a tenant which he could assign to the appellant.

Case referred to :—

(1) *Felce v. Hill* 92 L.J.K.B. 974.

The facts and arguments sufficiently appear from the judgments below.

Thorogood J. : — In this matter the plaintiffs claim possession of the premises known as "Bellaria" situate at 61 Meyer Road, Singapore, alleging that the defendant on or about the 15th of November, 1947, wrongfully took possession and still wrongfully keeps possession of the said premises.

On the liberation of the Colony of Singapore the premises were requisitioned by the British Military Administration for the official residence of the Air Commander-in-Chief. It is agreed that the premises were derequisitioned as from the 31st March, 1946, and let to Air Chief Marshal Sir Keith Park for a period of six months from the 1st April, 1946, with an option to renew for another six months and that Sir George Pirie who succeeded Sir Keith Park remained in possession of the premises under the above arrangement until the 31st March, 1947. By a letter dated 30th January, 1947, the solicitors for the trustees made it known to the R.A.F. Headquarters that two of the trustees of the estate of Sir Manasseh Meyer (deceased) the owners of the property, were "willing to grant a fresh lease for at least one year" subject to terms being arranged but suggested that it would be necessary for the solicitors of both parties to meet with a view to seeing what could be done to overcome certain legal difficulties involved. The solicitors for the trustees also stated in that letter that on the expiration of the then current lease on the 31st March, 1947, the Air Marshal-in-Chief would become the monthly tenant of the trustees of the estate and that it was not anticipated that the R.A.F. Headquarters would be asked to vacate the premises for the time being. It was suggested however that a difficulty might arise if the premises were sold. In a letter dated the 4th March, 1947, the R.A.F. Headquarters agreed that on the expiration of the existing lease, the Air Commander-in-Chief would become the monthly tenant of the property. By that letter which was addressed to the trustees of the estate of Sir Manasseh Meyer (deceased) and copy to Messrs. Drew & Napier, solicitors for R.A.F. Headquarters, the question of the renewal of the lease for one year was kept open. In the meantime however there had been correspondence between the solicitors to the parties in which by a letter dated the 25th February, 1947, the then solicitors for the trustees put an end to "all outstanding negotiations". Further on the 5th of March the solicitors for the trustees informed the Treasury solicitors that the trustees were unable to grant any extended lease or tenancy either formally or informally." At the same time the trustees' solicitors were unable to accept the contentions of the R.A.F. Headquarters as to the position regarding the premises but said that they were going through the whole of the correspondence.

The Air Commander-in-Chief, Sir George Pirie continued in possession of the premises after the expiration of the lease on 31st March, 1947, but nothing further appears to have been done in this matter until the 10th September when the Air Commander-in-Chief was notified that the property had been sold to the present plaintiffs who required vacant possession and derequisitioning of the property. On the 26th September the solicitors for the Commander-in-Chief confirmed that the rent of the premises would be paid to the new owners and stated that their client was in possession of the premises as a statutory tenant. The solicitors for the plaintiffs on the 15th of October accepted the Air Commander-in-Chief as a statutory tenant with no greater rights. On the 28th of October the solicitors for the Air Commander-in-Chief replied that the statutory rent for September and October would be paid. On the same day the solicitors for the plaintiffs gave notice to determine the statutory tenancy and to quit and yield up possession. The notice was said to have been given under clause 17(b) of the Control of Rent Ordinance, 1947.

On the 17th November, 1947, Air Marshal Sir George Pirie purported to transfer by a Deed of Assignment to Air Marshal Sir Hugh Lloyd, Knight, the present defendant "all his right title and interest in the said house and premises known as 61 Meyer Road, Singapore, as tenant from month to month or otherwise howsoever."

It is agreed that Air Marshal Sir Hugh Lloyd, Knight, has no more right title or interest in the premises than Sir George Pirie had within his power to transfer on the 17th day of November, 1947. We have therefore to consider what right, if any, Sir George Pirie had on that day. Was he a statutory tenant as claimed by the plaintiffs or was he a contractual tenant as claimed by the defendant? It is agreed that if Sir George Pirie was a statutory tenant his tenancy

came to an end when he left the premises and that he had no right whatever which he could transfer to the present defendant. It is also admitted that if it is held that Sir George Pirie was a contractual tenant on the 17th November, 1947 the notice to quit is void and the plaintiffs must fail.

But the plaintiffs claim that the defendant is estopped from denying that Sir George Pirie was a statutory tenant. In my opinion although the solicitors for the Air Commander-in-Chief stated that their client was a statutory tenant they did not thereby cause the plaintiffs to believe that statement or to act upon it. It is clear from the agreed bundle of correspondence that the plaintiffs' solicitors accepted the statement only after perusing the correspondence and after due consideration. There was no inducement on the part of Sir George Pirie's solicitors as a result of which the plaintiffs' solicitors changed their position. The position as stated was accepted after due deliberation. Both parties were aware of the facts. In my opinion therefore no estoppel arises in this matter.

It is argued for the defendant that Sir George Pirie had a month to month tenancy by express contract by virtue of an offer made by the letter of the 30th January quoted above and accepted on behalf of the Air Commander-in-Chief by the letter dated 4th March, 1947. The plaintiffs deny that there was any offer and contend that in any case if any offer had been made it had been withdrawn by the letter of the 25th February from the trustees' solicitors. For the defendant it is contended that the letter of the 25th February put an end to outstanding negotiations regarding a further lease only and did not affect the existing position. I am unable to find that there was any offer expressed or implied in the letter of the 30th January which if accepted would form a contract. That letter merely sets out in the fifth paragraph what the trustees thought would be the position on the expiration of the current lease. The letter from the solicitors on the 25th February is admitted to be erroneous as regards the major portion thereof and I am not prepared to read into it more than that all outstanding negotiations were thereby brought to an end.

Sir George Pirie having continued in possession by consent of both parties after the expiry of a lease for one year might have become a tenant from year to year. Both parties had however agreed that the continued tenancy would be from month to month only and so it might have remained had not the trustees sold the property a possibility foreshadowed in their letter of the 30th January, 1947. After the present plaintiffs had purchased the property inquiries were made on their behalf as to the tenancy and it was then stated by his solicitors that the Air Commander-in-Chief was in possession of the premises as a statutory tenant. That statement was accepted by the plaintiffs. There is no doubt in my mind therefore that whatever might have been the case on or for some time after the 1st April, 1947, the tenancy on the 15th October 1947, was agreed by the parties to be a statutory one. That statutory tenancy came to an end when Sir George Pirie left the premises whether the notice to quit was valid or not. It is agreed that a statutory tenancy cannot be assigned. In my opinion therefore the assignment of the premises on the 17th November is null and void and the defendant has no right whatever to the premises. I find that the defendant wrongfully took possession and wrongfully still keeps possession of the premises. I make an order therefore for possession of the premises as claimed.

The defendant appealed. The appeal was heard on April 22, 1948.

COURT OF APPEAL.

F. R. N. H. Massey for the appellant.

A. F. Thorne for the respondents.

Cur. Adv. Vult.

Murray-Aynsley C.J. : — In this case the appellant is the occupant and the respondents the owners of a certain dwelling house. In 1945 the house was occupied without any title other than military necessity by the Air Commander-in-Chief. It has since been occupied by his successors in office. At a subsequent period it was formally requisitioned, and up to 31st March, 1947, it was occupied by Sir George Pirie as a tenant for a period which was originally one of six months but which was renewed for a further period of six months which expired on that date. Thereafter Sir George Pirie remained in occupation. What his title was must be considered later. Some time before 10th September, 1947 the present respondents purchased the house. On the 17th November, 1947, Sir George Pirie executed a deed by which he transferred all his right, title and interest in the premises to the present appellant.

The respondents took proceedings to eject the appellant from the premises. They obtained judgment in the Court below. Against that judgment the present appeal is brought.

In considering the rights of the parties the first thing to be ascertained is, in my opinion, the position in April 1947, after the contractual tenancy previously referred to had expired.

The contention of the appellant was and still is that by agreement a monthly tenancy had been created which tenancy has not been determined. The terms

of this agreement are set out in paragraph 3 of the defence as follows :—

"3. The defendant says that the said Sir George Pirie, K.B.E., C.B., M.C., D.F.C., was a contractual tenant from month to month of the said premises from the previous owners thereof, namely, the Trustees of the Estate of Sir Manasseh Meyer, deceased, from whom the plaintiffs purchased the property on or about the 2nd September, 1947. The said monthly tenancy was offered to the Air Commander-in-Chief by letter dated 30th January, 1947, from the said Trustees addressed to Group Captain G. C. Blandon, Headquarters, R.A.F. Base, Singapore, who was the R.A.F. Administrative Officer concerned with this matter and was accepted by Sir George Pirie. Rent was paid in pursuance of the said agreement and on the terms of the said letter as from 1st April 1947, and was accepted by the said Trustees."

To establish this contention the appellant has to show (1) that the letter of 30th January, (record p. 49) is an offer and that it has been accepted. I do not think that it can be considered as an offer. It appears to me to be merely a statement as to the probable position after the end of March and it was subject to qualification relating to the rights of Mrs. Meyer to live in the house and it also refers to a possible difficulty that might be caused by a sale.

In any case I consider that the offer, if there had been one, had been withdrawn by the letter of Messrs. Chan, Laycock & Ong, solicitors for the then owners, dated 25th February, 1947. This letter precedes the purported acceptance of the alleged offer of a monthly tenancy which was dated 4th March 1947.

After this Sir George Pirie remained in occupation and tendered rent which was accepted by the then owners.

In the memorandum of appeal, but not in the defence, the appellant has contended that this acceptance of rent for a period after the expiry of the contractual tenancy would, by implication of law, create a monthly tenancy. It is true that would in the normal course of events create a contractual tenancy of some sort. Whether such tenancy would be a monthly tenancy or a tenancy for some other period is not material to the present case. Any tenancy so created would endure until terminated and it is common ground that there has been no termination of such a contractual tenancy, if, in point of fact, such tenancy was ever created.

A difficulty arises on this point by reason of the Increase of Rent (Restriction) Ordinance up to 31st July, 1947, and after that date by the Control of Rent Ordinance, No. 25 of 1947. The question is whether the fact that the tenant is enjoying statutory protection prevents the inference arising that the acceptance of rent by the landlord creates a contractual tenancy. In England a similar point arose under an analogous but not identical system of protecting tenants in the case of *Felce v. Hill*[1]. I consider that in spite of the differences between the Rent Acts in England and the Increase of Rent (Restriction) Ordinance here their consequences are the same to this extent, namely that the acceptance of rent by a landlord from a tenant who holds over after the expiry of a term does not by itself give rise to the inference that a new contractual term has been created.

In the circumstances of the present case I am unable to find anything else that would cause me to infer that a new contractual tenancy was created at this time. I form the conclusion that both in April 1947 and after the acceptance of the April rent by the landlords Sir George Pirie was and remained what is known as a statutory tenant.

For some time after this matters seem to have taken their course and the next thing to happen between the parties was a letter of 10th September following in which Sir George Pirie was informed of the sale to the respondents. The letter was sent by the solicitors for the respondents to Sir George Pirie. The letter was in the following terms :—

"We hereby give you notice that, by a Conveyance dated the 2nd day of September, 1947, the above property in which you reside was sold to our clients, Yeap Lian Seng, Yeap Hock Hoe, Yeap Hock Hin and Lee Chang Kim. All requisitioning compensations or rent should with effect from the 1st September, 1947, be paid to our clients, c/o the Ban Hin Lee Bank, Singapore.

We are also instructed to inform you that our clients require vacant possession of the property and to request you to cause the same to be derequisitioned forthwith.

Kindly acknowledge receipt of this letter and inform us on what date you will be vacating the property."

The then solicitors for Sir George Pirie, replied on 26th September. The last paragraph of the letter is the relevant one :—

"Referring to the second and last paragraphs of your said letter, we assume that you have not seen a copy of the correspondence passing between us and the former owner's Solicitors. The premises have been released from requisition and our client is in possession of the premises as a statutory tenant."

The solicitors for the respondents replied on 15th October as follows :—

"We have now had an opportunity of perusing the correspondence. After consideration, we accept your contention that your client, the Air Commander-in-Chief, Far East, is a statutory tenant and we accept him as such, with no greater rights.

Please inform us of the name of the individual who was holding the post of Air Commander-in-Chief, Far East, at the date of your letter, namely the 29th September 1947.

We shall be much obliged if you will ask your client to pay the statutory rental for the premises for the month of September."

On 28th October the solicitors for the respondents gave notice to determine the statutory tenancy. On 17th November Sir George Pirie purported to transfer his rights to the present appellant. These proceedings followed.

According to the statement of claim the case for the respondents was that Sir George Pirie was a statutory tenant and therefore had nothing to assign to the appellant, who was, therefore, not entitled to possession of the premises. I have already given the outline of the appellant's contention in his defence.

The reply of the respondents is of interest, as, apart from dealing with the allegation of a tenancy formed by express contract, it set up the contention that the letter of 26th September formed the basis of an estoppel.

So the matter came to trial. By that time it was clear to both sides that the issue was confined to quite narrow limits. It was conceded that if Sir George Pirie was a contractual tenant of any sort, such tenancy had not been determined and was validly assigned to the appellant. The respondents continued to assert that Sir George Pirie was not more than a statutory tenant.

In a considered judgment the learned Judge found against the contention of the appellant of an express contractual tenancy as alleged by the appellant. He also found against the contention of the respondents that there was an estoppel. He did, however, find that the exchange of letters of 26th September and 15th October formed a contract by which Sir George Pirie became a statutory tenant. He accordingly gave judgment in favour of the respondents. The appellant appealed.

I agree with the findings of the Judge on the first two points. I do not agree as to the third point. I do not do so on the narrow ground that a statutory tenancy cannot result from agreement. I do so on the ground that I find it impossible to construe the earlier of the two letters as an offer capable of being converted into a contract by acceptance. As I have already indicated, I consider that Sir George Pirie was at the material time a statutory tenant and the letters set forth accurately the position. The result of this conclusion is that I reach the same conclusion as the trial Judge by a different route.

I should dismiss the appeal with costs.

Pretheroe Ag. C.J. (F.M.) : — In this appeal I have had the advantage of reading the judgments of Murray-Aynsley C.J. and Brown J. and I am in complete agreement with the conclusion they have each reached. I desire to add a few words of my own, however, on one submission made by the appellant, as I regard it in a different light from the other members of the Court. In my opinion, it is reasonable to construe the letter from the trustees dated the 30th January, 1947, as an offer capable of acceptance. There had been previous correspondence regarding the continued tenancy of the property in question, and the letter of the 30th January was not written by a legal practitioner. Bearing these factors in mind, and reading the letter as a whole, I consider that the correct interpretation is that certain terms and conditions were defined subject to which the offer was made. I do not regard the words "on the expiration of the present lease..... the Air Commander-in-Chief will become the monthly tenant of the Trustees of the Estate" as being a statement of fact, because clearly the Air Commander-in-Chief could, in the exercise of his own unfettered option, prevent it becoming a fact by vacating the property on the expiration of his lease. It appears clear to me that the meaning to be attached to those words is "on the expiration of the present lease..... the Air Commander-in-Chief will, *if he decides to remain on as tenant*, become the monthly tenant of the Trustees of the Estate." This can be reasonably be construed as giving the Air Commander-in-Chief the option of remaining a tenant on the terms stated or vacating the premises. This offer, however, was revoked in the clearest possible terms by the letter from the then solicitors to the respondents dated 25th February, 1947. Some few days after acknowledging the receipt of this letter of revocation the appellant purported to accept the offer. This acceptance was clearly too late and had no legal effect. However, Sir George Pirie continued to occupy the property and the trustees accepted the same rent as was paid under the lease. In normal times the implication to be drawn from these facts was that Sir George Pirie was the tenant for six monthly periods (the term in the expired lease was six months) on the same terms and conditions as those contained in the expired lease so far as they were not inconsistent with a six monthly tenancy. But the times were not normal as the Increase of Rent (Restriction) Ordinance, 1939, was operative and the trustees could not evict Sir George Pirie without the leave of the Board. Naturally, therefore, the landlord accepted the rent, and acceptance in such circumstances does not support the implication that a six monthly tenancy had been created. It follows that Sir George Pirie occupied the property, not by virtue of any agreement with the trustees, but by virtue of the operation of the Ordinance. Clearly then he was a statutory, and not a contractual, tenant, and equally clearly he had no rights as a tenant which he could assign to Sir Hugh Lloyd. The other members of the Court reached the same decision by a different route and from that point I am in complete agreement with the reasons given by Murray-Aynsley C.J. and Brown J. and have nothing to add thereto.

In my opinion the appeal should be dismissed with costs.

Brown J. : —The substantial question raised in this appeal is whether Sir George Pirie, the appellant's predecessor, was a statutory tenant or a contractual tenant. If he was a statutory tenant, it is agreed that he could not assign his tenancy to the appellant, and the appellant must therefore fail. If he was a contractual tenant it is agreed that the notice to quit served on the appellant on the 28th October is void.

Sir George Pirie's lease, which was for a period of six months, expired on the 31st March, 1947. On 30th January, 1947, the trustees wrote :—

> On the expiration of the present lease at the end of March this year, the Air Commander-in-Chief will become the monthly tenant of the Trustees of the Estate, and since Mrs. Meyer has signified that she does not wish to reside in the house for at least one year, it is not anticipated that you will be asked to vacate the premises for the time being. The only difficulty that may possibly arise is that the house may be sold.

The reply from the R.A.F. Headquarters is dated 4th March 1947 and says :—

> It is agreed that on the expiration of the existing lease, the Air Commander-in-Chief will become the monthly tenant of the above property.

After the expiration of the lease on the 31st March the Air Commander-in-Chief remained in occupation, paying the same rent as he had paid under the lease, which was accepted monthly.

It is clear that the onus was upon the appellant to prove the existence of the contractual tenancy which he sets up, and if authority is needed for that proposition it will be found in the course of the judgments in *Felce v. Hill*[1]. The mere fact that the rent was paid and accepted is not sufficient to discharge this onus. The appellant must prove that the rent was paid and accepted in pursuance of, or with the mutual intention to create, a fresh agreement of tenancy. I can see nothing in the two letters which suggests a contract. The important paragraph in the letter of the 30th January is not in form an offer but a state ment of fact that on the expiration of the present lease the Air Commander-in-Chief will become a monthly tenant. Similarly the reply of the 4th of March is not in form an acceptance but an expression of concurrence with that statement of fact. But before that reply was sent, two letters were written by Messrs. Chan, Laycock & Ong, who were then acting for the trustees, to Messrs. Drew & Napier, who were then acting for the Air Commander-in-Chief. Those letters are dated the 24th and 25th of February, 1947, and are altogether inconsistent with any prior offer of a contract. Furthermore, after the property was sold to the respondents on the 2nd of September, 1947, there was correspondence between the parties' solicitors in which there was no suggestion on either side that the appellant was a contractual tenant, both sides being agreed in taking the view that his position was that of a statutory tenant. In my opinion the learned Judge was right in holding that the appellant had failed to establish the contract which he has pleaded.

In the absence of any fresh contract, Sir George Pirie's position after the expiration of his lease would, if there had been no Rent Act, have been that of a tenant at will, and, but for the restrictions imposed by the Rent Act, the landlord would have been entitled to recover possession at any time without giving notice to quit. There remains to be considered whether a person in such a position, holding over after the determination of his lease, is a statutory tenant under the provisions of the Increase of Rent (Restriction) Ordinance, 1939, which has now been repealed by the Control of Rent Ordinance, 1947, but which was in force at the end of March 1947 when Sir George Pirie's lease expired.

Section 8 of the 1939 Ordinance provides that "no landlord shall without an order of the Board eject or apply to any Court for an order for the recovery of possession of any premises to which this Ordinance applies." Section 15 provides that any tenant remaining in possession of any premises by virtue of the provisions of this Ordinance after the determination of his tenancy shall become a statutory tenant. Obviously if the landlord had sought to recover possession, Sir George would have been protected by the Ordinance as a statutory tenant. If his tenancy has been contractual, he would not have become a statutory tenant until the date upon which the tenancy had been determined by a notice to quit, because until that date a contractual tenant is protected by his contract and the protection of the Ordinance is not required. But in the case of a lessee holding over, with no fresh contract, after the expiration of his lease, the protection of the Ordinance operates as soon as his lease expires because, if the Ordinance did not exist the landlord could recover possession at any time without notice. He therefore becomes a statutory tenant upon the expiration of his lease. That, I think, is borne out by the case of *Felce v. Hill*[1].

Sir George Pirie was therefore a statutory tenant with no interest which he could assign to the appellant. In my opinion the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors : *Allen & Gledhill; Donaldson & Burkinshaw.*